

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES O'NEIL WIGGIN,

Plaintiff,

v.

WILLIAM ROLLINS, R. BEDNACZYK,  
RICHARD ENDERS, BO GUESCHEL,  
MARK BEITER, MARY KEPPLER,  
ROBERTA KANIVE, TIM PANEK,  
YELENA BROKHIS, SHERYL  
ALBERT, FRANK LONGANO, KELLY  
REMY, MARTHA NEWLON, FRED  
NAVARRO, J. DAVID KENNEDY,  
STEVE HAMMOND, LONIE  
FIGUEROA, JOHN DOMINOSKI,  
RANDALL PIERCE, SARAH SMITH,  
DEAN KAO, FLO FADELE, JOHN DOE  
NOS. 1-2,

Defendants.

CASE NO. C13-5057 BHS/KLS

ORDER DENYING MOTION FOR  
COUNSEL

Before the Court is Plaintiff's Motion for Appointment of Counsel. ECF No. 6. Having carefully considered the motion and balance of the record, the Court finds that the motion should be denied.

**DISCUSSION**

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may

1 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
2 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
3 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional  
4 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]  
5 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal  
6 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting  
7 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he  
8 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
9 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
10 1101, 1103 (9<sup>th</sup> Cir. 2004).

11 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
12 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues  
13 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further  
14 facts during litigation. But, if all that was required to establish the complexity of the relevant  
15 issues was a demonstration of the need for development of further facts, then practically all cases  
16 would involve complex legal issues. *Id.*

17 Plaintiff states that he is unable to afford counsel and has not been able to obtain counsel.  
18 ECF No. 6. He also states that his imprisonment will greatly limit his ability to litigate, that the  
19 issues involved are complex, and that his legal knowledge and access to the law library are  
20 limited. *Id.*, p. 1. These are not exceptional circumstances. Plaintiff filed his complaint *pro se*  
21 and has demonstrated an ability to articulate his claims *pro se* in a clear fashion understandable  
22 to this Court. Based on Plaintiff’s allegations, the Court notes that this is not a complex case  
23 involving complex facts or law. In addition, Plaintiff presents no evidence to show that he is  
24 likely to succeed on the merits of his case. While Plaintiff may not have vast resources or legal

1 training, he meets the threshold for a pro se litigant. Concerns regarding investigation, access to  
2 legal resources or examination of witnesses are not exceptional factors, but are the type of  
3 difficulties encountered by many pro se litigants. Plaintiff has failed in his burden to demonstrate  
4 an inability to present his claims to this Court without counsel.

5 Accordingly, it is **ORDERED**:

6 (1) Plaintiff's motion for counsel (ECF No. 6) is **DENIED**.

7 (2) The Clerk shall send a copy of this Order to Plaintiff and counsel for Defendants.  
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9 **DATED** this 6th day of February, 2013.

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12 Karen L. Strombom  
13 United States Magistrate Judge  
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